APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,467	09/30/2003	Jeyhan Karaoguz	14278US02	5573

23446   7590   09/19/2007

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EXAMINER
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ART UNIT	PAPER NUMBER
2609	

MAIL DATE	DELIVERY MODE
09/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>September 30, 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-31 are presented for examination.

Information Disclosure Statement

2.   The listing of references in the specification is not a proper information disclosure

statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other

information submitted for consideration by the Office, and MPEP § 609.04(a) states,

"the list may not be incorporated into the specification but must be submitted in a

separate paper." Therefore, unless the references have been cited by the examiner on

form PTO-892, they have not been considered. Incorporated reference (Attorney

Docket No. 14276US02) is disclosed in paragraph [36] of the specification.

Specification

3.   The specification is objected to as failing to provide proper antecedent basis for

the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: The specification does not distinctly define (as it appears in

paragraph [87] of the specification) the characteristics of each of the claimed processors

of claim 31: "a media processing system processor, a media peripheral processor, a

customized computer processor, a storage system processor and a customized

computer executing media exchange software processor." Without further discloser as

to the distinctness of each claimed processor in claim 31, each claimed processor will

be treated as indistinguishable and therefore the broadest reasonable interpretation of a

processor will be used in the interpretation of claim 31.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   Claims 1-7, 9-17, 19-27, 29, and 30 are rejected under 35 U.S.C 102(b) as being

anticipated by Novak (US Patent Application Publication 2002/0104099), hereinafter

Novak.

6.   In reference to claims 1 and 21, Novak teaches a method of and processor for

programming media content in a distributed media network (using STB 152 executing

the method of Figure 11 as described in Paragraphs 0078-0080), said method and

processor operation comprising: selecting (by way of remote control button 174

described in Paragraph 0073 Lines 7-10) at least one customized media channel

established by a user ("synthetic channel" described in Paragraph 0069 Lines 6-10)

based on at least one input from said user; identifying at least one of media, data and

service (Figure 5 interface 506 as described in Paragraph 0061 Lines 5-8) for said

selected at least one customized media channel; and presenting directly in said at least

one customized media channel, said identified at least one of media, data and service

(see interface of Figure 7 described in Paragraphs 0064 Lines 1-10).

7.   In reference to claims 2 and 22, Novak teaches a method of and processor for

displaying said identified at least one of media, data and service in a channel view

(Figure 9 as described in Paragraph 0074 Lines 1-7) corresponding to said at least one

customized media channel (Figure 9 "Joe's TV Channel" described in Paragraph 0073

Lines 7-13).

8.   In reference to claims 3 and 23, Novak teaches a method of and processor for

scheduling said display of said identified at least one of media, data and service (by way

of "time slots" of Figure 7 described in Paragraph 0064 Lines 10-15) in said channel

view corresponding to said at least one customized media channel.

9.   In reference to claims 4 and 24, Novak teaches a method of and processor for

updating (as updated by web site 124 described in Paragraph 0083 Lines 7-12) said

display with newly available at least one of media, data and service (as made available

by upload source 122 described in Paragraph 0081) in said channel view corresponding

to said at least one customized media channel.

10.   In reference to claims 5 and 25, Novak teaches a method of and processor for

transferring said identified at least one of media, data and service to said at least one

customized media channel (see flow diagram block 408 as described in Paragraph

0060).

11.   In reference to claims 6 and 26, Novak teaches a method of selecting said

identified at least one of media, data and service from a third party (shown as upload

source 222 referenced in Paragraph 0043).

12.   In reference to claims 7 and 27, Novak teaches a method of and processor for

transferring (from upload source 222 as described in Paragraph 0043 Lines 1-3) said

selected at least one of media, data and service from a storage associated with said

third party (web site 224 server as described in Paragraph 0043 Lines 3-4) into said at

least one customized media channel (a method of "uploading" is described in Paragraph

0062 Lines 1-8).

13.   In reference to claims 9 and 19, Novak teaches a method of and processor for

receiving said selection of said identified at least one of media, data and service (at STB

152 as described in Paragraph 0028 Lines 3-7) based on at least one of a device view

(interface 506 described in Paragraph 0061 Lines 4-13) and a media view (interface 702

as described in Paragraph 0063 Lines 7-16).

14.   In reference to claims 10 and 20, Novak teaches a method of and processor for

controlling said presentation of said identified at least one of media, data and service

from a graphical user interface corresponding to a channel view (see EPG 802

"controlling" aspects as described in Paragraph 0071).

15.   In reference to claims 11-17 and 19-20, Novak teaches a machine-readable

storage (described in Paragraph 0077 Lines 1-10) having stored thereon, a computer

program having at least one code section for programming media content in a

distributed media network (using "token" program described in Paragraph 0058 Lines 1-

10), the at least one code section being executable by a machine (STB 152 described in

Paragraph 0077 Lines 10-14) for causing the machine to perform the method of claims

1 through 10, as rejected above.

16.   In reference to claim 21, Novak teaches a system for programming media

content in a distributed media network (shown in Figure 3 described in Paragraph

0045).

17.   In reference to claim 31, Novak teaches a processor that is a media processing

system processor (Paragraph 0085 describing the STB 152 executing flow diagram

block 1114).

Claim Rejections - 35 USC § 103

18.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

19.   Claims 8, 18, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Novak (US Patent Application Publication 2002/0104099) in view of Eager et al.

(6,868,452) herein referred to as Eager.

        Novak does not disclose a method of queuing prior to the transfer of media

content based on bandwidth usage, delivery cost, or delivery schedule.

        Eager discloses a method of improving delivery of continuous media programs

by using a remote server to store portions of the program that cannot be immediately

transmitted to the end-user. The server transmits the media programs based on the

costs of storing (Col 5 Line 4), the cost of bandwidth (Col 5 Line 5), and delivery period

(Col 9 Lines 15-19).

Eager discloses the desirability to reduce bandwidth costs and loads on the server associated with the storage and transmission of streaming data (Col 5 Lines 17-23). In addition, Eager further discloses the advantage of reduced delivery costs created by using a regional server cache as a media storage device. It would be advantageous to combine the system of Novak with the server of Eager due the increase in control and regulation of streaming media in the network. In addition, the use of the server of Eager would reduce the operating cost of Novak's network, and therefore the combination of the server into the network would make the network more cost effective.

In light of Eager, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the server disclosed by Eager in the media network system disclosed by Novak in order to queue data based on bandwidth usage, delivery cost, of delivery schedule.

Conclusion

20.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made. Applicant must show how the amendments avoid such references and objections. See 37 CFR 1.111(c).

21.   US Patent Number 6,721,955, Khoo et al., teaches a method for providing a customized media list to a user over a data network.

22.   US Patent Number 7,146,632, Miller, teaches an interactive information

aggregator that allows ancillary devices (a PC, wireless handheld devices, companion

set top boxes, etc.) to interact with cable signal triggers, without the need to interface

with a set top box of a television.

23.   US Patent Number 6,631,523, Matthews, III et al, teaches an interactive

entertainment system with hyperlink program navigation. The hyperlinks reference

target resources, such as interactive content relating to video programs integrated into

the electronic program guide user interface.

24.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Patrick A. Ryan whose telephone number is (571) 270-

5086. The examiner can normally be reached on Mon to Thur, 8:00am - 5:00pm EST.

25.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Dennis Chow can be reached on (571) 272-7767. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PAR
September 11, 2007

DENNIS DOON CHOW
SUPERVISORY PATENT EXAMINER